

**Before the
DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION
Washington, DC**

In the Matter of)	
)	
American Recovery and Reinvestment)	Docket No. 0907141137-91375-05
Act of 2009)	
)	
Broadband Technology Opportunities)	
Program)	

COMMENTS OF THE NATIONAL EBS ASSOCIATION

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Executive Summary

NEBSA urges the granting agencies make much-needed application and process reforms that will help encourage applications from and grant funding to anchor institutions for educational broadband projects. NEBSA requests that the agencies consider changes to timing, “linking,” public/private partnerships, data and mapping processes and confidentiality, so that anchor institutions (like NEBSA members) may participate fully in the BTOP and BIP programs, as Congress intended.

NEBSA also urges the agencies to revisit the policies in the original NOFA so that educational broadband projects in all areas can qualify for grants funds and will receive substantial scoring preferences. Specifically, NEBSA asks the agencies to create a special application category and a special application form for educational broadband projects for Round 2, similar to the category and track for Public Computing Center projects in Round 1. NEBSA requests that the agencies move away from the narrow focus on remote, unserved and underserved areas to target funding towards other statutory goals of the Recovery Act, including broadband for community anchor institutions and education, economic development and vulnerable populations.

NEBSA asks that scoring criteria be adjusted to reward “whole package” approaches, public/private partnerships, multiple purpose applications, comprehensive community results, and cost-effective projects, like the educational broadband projects that NEBSA members envision for their communities.

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COMMENTS OF THE NATIONAL EBS ASSOCIATION

The National EBS Association (“NEBSA”) submits these comments in response to the Joint Request for Information (“Joint RFI”) issued November 9, 2009 by the Department of Commerce, National Telecommunications and Information Administration, and Department of Agriculture, Rural Utilities Service (the agencies), regarding the implementation of the Broadband Technology Opportunities Program (BTOP) of the NTIA, seeking revisions to the first Notice of Funds Availability (NOFA).¹

Introduction

NEBSA, established in 1978 and formerly known as the National ITFS Association, is a non-profit, professional organization representing Educational Broadband Service (EBS) licensees and other organizations working with EBS licensees to promote and develop EBS services.

EBS is a radiofrequency transmission service in the 2.5 GHz band, licensed by the Federal Communications Commission to non-profit and governmental educational entities for the transmission of wireless broadband and other services. EBS is the *only* spectrum licensed by the FCC exclusively to educators for educational purposes.²

There are over 2,000 EBS stations licensed by the FCC to approximately 1,300 educational entities throughout the United States. The licensees of these stations are state government agencies, state universities and university systems, public community and technical

¹ Broadband Initiatives Program and Broadband Technology Opportunities Program, 74 Fed. Reg. 58,940 (Nov. 16, 2009).

² EBS was originally called the Instructional Television Fixed Service (ITFS), which was created by the FCC in 1963 to meet the needs of educators for the transmission of video instructional material to students enrolled in courses of formal education. In 2005, the FCC significantly revised its spectrum and technical rules to turn the previous video service into a wireless broadband service, and the 2.5 GHz band is actively being re-developed for the operation of WIMAX systems.

colleges, private universities and colleges, public elementary and secondary school districts, private schools (including Catholic school systems in a number of large metropolitan areas), public television and radio stations, hospitals and hospital associations, and private, non-profit educational entities.

The NEBSA members are often “the” (or one of “the”) anchor institutions in their communities, fully integrated into the life of their communities. Thus, NEBSA members are the sorts of institutions that Congress intended to receive BTOP funding.³ Yet, many NEBSA members that had hoped to file applications for Recovery Act broadband stimulus funding for wireless broadband projects could not do so due to the overly restrictive provisions in the NOFA, including the definitions of unserved and underserved areas. For that reason, many NEBSA members with high-quality broadband infrastructure and other projects that would benefit urban or other non-rural areas did not (or could not) file applications in Round 1.

For Round 2, NEBSA urges a number of changes, including the establishment of a separate application and separate evaluation criteria for educational broadband applications, under which EBS licensees could apply for grant funds specifically targeted for educational broadband purposes that serve the wider community.

Comments

NEBSA was disappointed that the initial NOFA did not provide opportunities for swift and cost-effective development of EBS-based wireless broadband facilities in areas that need broadband facilities. Moreover, the few NEBSA members that did participate in BTOP applications found the applicant experience to be very cumbersome and off-putting. For these

³ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(b)(3)(A), 123 Stat. 115 (2009) (Recovery Act).

reasons, the agencies should change the NOFA for the second (and final) round of funding to enable full realization of EBS-based wireless broadband facilities in qualifying areas, including a new category of application and evaluation criteria for educational broadband. These educational broadband facilities and related services will advance the statutory goals of the Recovery Act.

In particular, NEBSA provides the following comments:

1. Application and Review Process

Timing. NEBSA requests that the second NOFA provide more time for the preparation of applications, allowing a minimum of three (3) months between the NOFA (and availability of all required applications materials) and the application deadline. NEBSA also asks that the agencies take into consideration the typical “calendar” of the anchor institution and educational community (including holidays, spring breaks, graduation and summer vacations) as it sets deadlines, so that anchor institutions and educators are not, as a group, disadvantaged by application timing issues.

Links. Allowing infrastructure, public computing center (PCC) and sustainable broadband adoption (SBA) applications to be linked by the applicants into a cohesive proposal would strengthen “combination” applications that could provide comprehensive and cost-effective educational broadband solutions to communities in terms of infrastructure, accessibility (PCC) and outreach/training (SBA). These combination applications should be reviewed together as a package and should receive substantial preferences under scoring criteria.

Public/Private. The agencies should give substantial credit to public/private partnerships that are documented in writing with appropriate commitment letters. These partnerships enhance private and community involvement and leverage public and private funds

and assets in ways that best advance BTOP objectives. The agencies should require full initial application information only from the lead applicant and not each member of the partnership, in order to keep the application process streamlined.

Data and Mapping Process. EBS applicants found the data collection and mapping process to be unduly burdensome, which discouraged and frustrated potential applicants. The required use of census block data unnecessarily limited the pool of qualified applicants and unduly complicated the application and mapping process. Mapping should be easily discernible and include, for example, typical political boundaries, which lend themselves to the jurisdictions of anchor institutions, including educators. The agencies should allow use of reliable and verifiable data and mapping on levels other than census blocks, to permit the widest variety of applicants and to streamline the application process. The Recovery Act does not require a certain level of mapping, and in fact, such a granular requirement stymies the statutory goal to provide funding to anchor institutions, non-profits, and small businesses.

Confidentiality. The agencies should make the applicants' executive summaries for the second round available to the public. However, the agencies should continue to treat application data (including exhibits) as confidential and proprietary, to encourage public/private partnerships. For profit companies, even when partnering with public institutions on a federal grant project, have a legitimate business interest in keeping business information confidential and proprietary. Failing to honor confidentiality will only discourage robust public/private partnerships. At the very least, the agencies should allow an applicant to designate portions of the application as confidential and proprietary and honor those designations.

2. Policy Issues Addressed in the NOFA

Funding Priorities. The second round should target funding (and infrastructure funding, specifically) towards educational broadband for anchor institutions, including those that serve vulnerable populations in urban areas. The first round targeted funds toward rural areas and unserved/underserved areas, using definitions carefully designed to further broadband in isolated areas. While NEBSA may have disagreed with this policy choice, it was a legitimate goal for the agencies to reach out to those areas, consistent with the Recovery Act, in the first round.

The Recovery Act, however, does not elevate “unserved” and “underserved” above all other funding priorities – those are only two of the five enumerated statutory goals.⁴ For this second (and final) grant round, the agencies should embrace the *other* funding priorities that fulfill the Recovery Act’s five enumerated statutory purposes. Specifically, the agencies should now focus on the identified statutory goals (other than unserved and underserved areas), including: (1) providing funding for broadband education, awareness, training, access, equipment and support to: (a) schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education (*i.e.*, anchor institutions); (b) low-income, unemployed, aged and otherwise vulnerable populations, and (c) job-creating strategic facilities located within a State-designated economic zone; (2) broadband access and use by public safety; and (3) stimulate the demand for broadband, economic growth and job creation. The agencies should focus on these objectives without regard to whether an area is unserved or underserved.

⁴ The five statutory goals are: 1) broadband access to “unserved areas”; 2) broadband access to “underserved areas”; 3) broadband education, training, access, equipment and support to community anchor institutions, vulnerable populations and job-training facilities located in specific economic development districts; 4) broadband access and use by public safety; and 5) stimulate the demand for broadband, economic growth and job creation.

Congress clearly signaled that the agency should look favorably upon anchor institutions and aid to vulnerable populations, wherever located. The statute specifically requires NTIA to consider whether a grant will “enhance service for health care delivery, education, or children” – all of which are key parts of the very mission of anchor institutions. The list of competitive grants that the “Assistant Secretary may make” under the statute expressly includes anchor institutions and vulnerable populations. Targeting this second and final round towards educational broadband for anchor institutions and vulnerable populations will allow the agency to “stimulate the demand for broadband, economic growth, and job creation” consistent with the aims of the Recovery Act.

For these reasons, NEBSA believes that educational broadband deserves a separate application category and separate evaluation criteria.

Middle Mile and “Comprehensive Community” Projects. NEBSA agrees that ensuring anchor institutions have high-speed connectivity contributes to sustainable community growth and prosperity. However, the increased focus on middle mile projects (as currently defined in conjunction with “unserved” and “underserved” areas) and on “comprehensive communities” for anchor institutions is misplaced. Anchor institutions are not in the business of building or providing “middle mile” infrastructure or broadband end-user services and it does not make good policy sense to encourage them to enter that business when there are sound broadband infrastructure and end-user service providers that could partner with them in ways that further the nation’s economic recovery. The agencies should be creating incentives for anchor institutions to partner with others to create “comprehensive communities” instead of focusing funds just on middle mile projects that reach unserved or underserved areas.

Thus, the agencies should focus Round 2 funding on partnerships that achieve “comprehensive community” results, including educational broadband for community anchor institutions that partner with infrastructure or last mile providers – irrespective of the narrow definitions of unserved or underserved or the complicated middle mile definition. In particular, the agencies should make educational broadband eligible for funding in ways that will encourage wireless providers to partner with community anchor institutions and combine infrastructure with outreach and training activities, by creating a separate application category and evaluation criteria for qualifying educational broadband projects, similar to the treatment that NTIA accorded to Public Computing Center applicants in Round 1. Such treatment for educational broadband is consistent with the Recovery Act’s goal to provide “access, equipment, and support” to anchor institutions.⁵

Most of the 2.5 GHz band is licensed to educators – colleges, universities, public and private schools, governmental educational entities, health care facilities, and other nonprofit educational entities and the FCC’s rules governing the use of EBS stations require that a portion of the capacity of each station be used for purposes that further the mission of accredited schools. Thus, by definition, broadband deployment via EBS and 2.5 GHz based wireless systems facilitates and supports education by providing wireless broadband access and related equipment and services to local educational institutions that anchor the community.

EBS licensees are also either local educational and non-profit institutions in their communities, or if not local, required to partner with and support such local institutions. The interests and mission of EBS licensees therefore go beyond merely providing instructional services to students in classrooms. These licensees are active in educating and supporting

⁵ Recovery Act, at § 6001(b)(3).

important community, public service and public safety organizations and initiatives, all in ways that further Recovery Act objectives.⁶ Therefore, the provision of broadband services through deployments in the 2.5 GHz band will facilitate the provision of services to and by those organizations and initiatives, again, in ways envisioned by the Recovery Act to “facilitate greater use of broadband service by or through these organizations.”⁷

To achieve Recovery Act objectives, community anchor and educational institutions that partner with infrastructure providers for educational broadband projects should be given a separate funding category. Such institutions will need to document the substantial Recovery Act benefits flowing from their projects, which may include broadband access to urban school districts, broadband access to all end users in school district boundaries, outreach and training to drive broadband adoption, and job creation and stimulation. As explained above, public/private partnerships should be encouraged because they leverage public and private funds (and capabilities) to achieve the best broadband result for the community. In addition, projects that target urban vulnerable populations should get greater weight in the evaluation process, consistent with the Recovery Act.⁸

Economic Development. NEBSA applauds a funding focus on economic development, but a regional approach could well be too cumbersome for innovative broadband flexibility and the swift buildouts required for Recovery Act funds. Instead, the agencies should credit applications that support community-based economic development in struggling areas consistent with the Recovery Act’s emphasis on job creation and economic growth, which would include educational broadband projects. For economic development purposes, funds should be

⁶ See Recovery Act, at § 6001(b)(3) (to “provide broadband education, awareness, [and] training . . .”); Recovery Act, at § 6001(b)(4) (to “improve access to, and use of, broadband service by public safety agencies”).

⁷ Recovery Act, at § 6001(b)(3)(A).

targeted to urban areas suffering economic hardship and for infrastructure programs that “link” with anchor institutions for workforce training, student and adult community outreach in ways that further economic development.

Targeted Populations. To best reach vulnerable populations targeted by the Recovery Act in Sections 6001(b)(3)(B) and 6001(g)(4), the agency should create a new category of funding for educational broadband projects, as described above. Moreover, PCC and SBA funds for anchor institutions should be able to be linked to wireless infrastructure projects for urban areas, including those with vulnerable populations (elderly, minority, low-income, etc.) so that infrastructure, local access, affordable adoption, training and awareness can be developed as a “whole package” approach, rather than piecemeal.

Evaluation Criteria. To best target funds, the agencies should create a new application and new evaluation criteria for educational broadband projects, as described below in program definitions. Moreover, the agency should reward “whole package” approaches with substantial credit in the scoring process to meet the Congressional mandate to consider projects that will increase affordability, speed, and access to health care and education “to the greatest population of users in the area.”⁹ The mix should include the cost-effectiveness of the planned network deployment, predicted time to market and the sustainability of the program once the grant dollars have been spent, as well as affordable subscription price and equipment prices, interoperable equipment and the size of the proposed service footprint.

NTIA should score applications that serve multiple purposes or populations targeted by the Recovery Act higher than single-purpose applications. For example, public/private partnerships should score higher than individual projects. Projects that combine

⁹ Recovery Act, at § 6001(g)(4).

infrastructure with sustainable adoption and computing accessibility should score higher than individual projects. Projects that support broadband affordability and subscribership among targeted groups and support public safety should be scored higher. Encouraging and rewarding the submission of multi-faceted projects will ensure that grant dollars reach the “greatest population” and will create incentives for creative public/private partnerships, leveraging the public and private investment in the projects.

Program Definitions. As the Joint RFI suggests, the extremely narrow definitions of remote, unserved and underserved, combined with the requirements that all infrastructure projects must fit within those definitions, have unduly restricted BTOP funds in Round 1. For Round 2, NEBSA suggests that broader definitions furthering educational broadband should be used, so that projects in urban areas with low adoption rates, particularly those in economic turmoil, could qualify for educational broadband funds. After all, Congress specifically targeted BTOP to assist “economic growth and job creation.”¹⁰

Regardless how “unserved” and “underserved” are defined, great work can be done serving populations that are not enjoying the benefits of whatever level of broadband is generally available in their area. The needs of these populations can be as alarming and pervasive as those in markets where no one has access to broadband. Because of lack of education or computer illiteracy, expense associated with existing broadband services or equipment, or membership in a vulnerable population such as low-income, unemployed or elderly, their needs are compelling. Indeed, as described further above, Section 6001(b) establishes five purposes for the NTIA grant program, giving equal weight to all five purposes. The funding programs should also give equal weight to all five purposes.

⁹ Recovery Act, at § 6001(h)(2)(A)-(C).

NEBSA urges the agencies to acknowledge the strategic importance of broadband for community anchor institutions by creating a separate application and evaluation criteria for educational broadband. This application and corresponding criteria should be modeled after the Public Computing Center application used in Round 1 and permit a limited infrastructure wireless broadband buildout associated with an educational broadband project. As explained above, in Round 1, all infrastructure applications had to meet the overly restrictive unserved/underserved definitions (with the limited exception of WANs associated with Public Computing Center applications.) These definitional obstacles precluded NEBSA members from pursuing wireless broadband projects where EBS licensees not only wanted to provide wireless broadband service to specific school locations, but also provide “end user” service in the communities surrounding the schools. In almost every case where a NEBSA member wanted to file an application, there were existing service providers in those areas that prevented the application from qualifying as unserved or underserved under the restrictive definitions. This approach in Round 1 essentially strangled educational wireless broadband projects, precluding worthwhile community anchor projects by EBS licensees that would provide “educational and employment opportunities” in many areas devastated by economic turmoil.¹¹

If the agency is unwilling to create a separate educational broadband application and criteria, unserved and underserved areas should be separately assessed for wireless and fixed terrestrial networks. Otherwise, large areas of the United States that theoretically have a fixed terrestrial connection would be considered served without regard to the cost of the service, the actual availability, and the lack of mobility inherent in that connection.

¹⁰ Recovery Act, at § 6001(b)(5).

¹¹ Recovery Act, at § 6001(g)(4).

Unserved areas for wireless broadband purposes should be areas where a significant number of end users lack access at the speeds typically available for mobile broadband and where deployments by commercial operators are not in the pipeline. Underserved areas for wireless broadband purposes would include areas that do not have access to wireless broadband, or, significantly, where vulnerable populations have low adoption rates.

Sale of Project Assets. NEBSA suggests that the NOFA restriction on the sale or lease of project assets be revised consistent with prior agency regulations set forth in 15 C.F.R. Sections 2301.19(C) and 2301.22(g).¹² These regulations have proved to be both workable and protective of the federal government's legitimate interests in the integrity of its grant programs.

Cost Effectiveness. Wireless educational broadband services, particularly WIMAX-based services that are now starting to be deployed in larger markets over EBS stations in the 2.5 GHz band, are the most cost-effective means of providing affordable broadband to areas and vulnerable populations intended to be targeted by the Recovery Act. Given the Recovery Act's expedited timetable, the agencies should acknowledge that no other broadband deployments that directly benefit educators, particularly terrestrial fixed systems, can be moved forward and completed as quickly as wireless broadband deployments in the 2.5 GHz band. NEBSA therefore recommends that cost effectiveness be included as a significant factor in the scoring criteria for evaluating broadband projects. These deployments will immediately stimulate job creation to design, manufacture, install, test and operate these systems.¹³ Additional jobs will be created to market and support the wireless broadband services. Most of these jobs will be located in the areas where service is provided – some of the urban and other areas most in need of stimulus.

¹²15 C.F.R. §§ 2301.19(C); 2301.22(g) (2008).

Conclusion

The Educational Broadband Service in the 2.5 GHz band offers an unparalleled and targeted opportunity for the rapid, efficient and effective deployment of educational broadband service consistent with the Recovery Act. EBS licensees should be encouraged to seek and to be awarded BTOP funds in furtherance of the goals of the Recovery Act, as set forth in these Comments.

Respectfully submitted,

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¹³ Recovery Act, at § 6001(b)(5).